Supreme Court, U.S.
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No. 03-1601

IN THE

# Supreme Court of the United States

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CITY OF RANCHO PALOS VERDES, *et al.*,
*Petitioners*,

v.

MARK J. ABRAMS,
*Respondent.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## REPLY BRIEF FOR PETITIONERS

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Respondent does not dispute that the Ninth Circuit's decision creates a circuit conflict. The Third and Seventh Circuits have concluded that, because the Communications Act creates a "comprehensive remedial scheme," violations of the antenna siting provisions of 47 U.S.C. § 332(c)(7) may not be asserted under 42 U.S.C. § 1983. *Nextel Partners Inc.* v. *Kingston Township*, 286 F.3d 687 (3d Cir. 2002); *Primeco PCS (Verizon Wireless)* v. *City of Mequon*, 352 F.3d 1147 (7th Cir. 2003). The Ninth Circuit reached the opposite result here, exposing thousands of local governments to significant damages and fee awards for even good-faith zoning decisions.

Respondent's attempt to downplay the importance of that conflict is unpersuasive. His analysis overlooks at least a hundred recent cases; ignores the chilling effect on local authority; fails to acknowledge the issue's legal significance; and is belied by the amicus briefs submitted by nine States, by the National League of Cities, *et al.*, and by cities and counties throughout the Ninth Circuit, all of which urge the Court to grant review. Nor is the Ninth Circuit's remand to determine the *amount* of damages and fees under Sections 1983 and 1988 an impediment to further review. The authorities cited by respondent confirm the propriety of review despite such remands, and this Court has regularly resolved the issue raised here—the availability of Section 1983 and associated relief—in cases with indistinguishable remands, including *Middlesex County Sewerage Authority* v. *National Sea Clammers Ass'n*, 453 U.S. 1 (1981), itself.

## I. The Circuits And District Courts Are Divided

Although respondent repeatedly acknowledges the "circuit split," Br. in Opp. 11, 13, he attempts to dismiss the Third Circuit's decision in *Nextel* as "dictum," *id.* at 13. But respondent concedes that *Nextel* itself twice characterizes its ruling as a holding. *Ibid.*; 286 F.3d at 694 ("We hold that" Section 332(c)(7)'s "comprehensive remedial regime" precludes claims "under § 1983"); *id.* at 696 (We "hold that the" Act "did not create a right that can be asserted under

§ 1983"). The Ninth Circuit understood *Nextel*'s resolution of that issue to be a "holding." Pet. App. 8a. And respondent conceded below that it was a "holding." Resp. C.A. Br. 36.

Respondent now claims that *Nextel*'s resolution of that issue—the entirety of Part III of the opinion—was "unnecessary" because, "[b]efore reaching the Section 1983 issue, the Third Circuit first held that" there was no "substantive [Communications Act] violation" at all. Br. in Opp. 13. But respondent does not cite *where* the Third Circuit allegedly held that there was no "substantive * * * violation." Nor can such a holding be found. *Nextel* first held that the plaintiff could not assert the alleged violation *under the cause of action* created by the Communications Act, 47 U.S.C. § 332(c)(7)(B)(v), because that cause of action requires "final action" (or a failure to act) on a "request for authorization to place, construct, or modify personal wireless service facilities." The plaintiff in *Nextel* had never filed such a request. 286 F.3d at 692-693; Pet. 14 n.6. *Nextel* then held that the claim for injunctive relief became moot when the challenged ordinance was amended. 286 F.3d at 693; Pet. 14 n.6. Finally, *Nextel* rejected the Section 1983 damages claim, holding that the Communications Act creates a comprehensive remedial scheme. 286 F.3d at 693-696. Because the plaintiff in *Nextel* would have been entitled to pursue its Section 1983 claim absent that holding—seeking damages for the period during which the challenged ordinance allegedly "prohibit[ed] the provision of personal wireless services" in violation of 47 U.S.C. § 332(c)(7)(B)(i), see 286 F.2d at 689—*Nextel*'s resolution of that issue was unquestionably necessary to the judgment.

Although respondent does not even attempt to characterize the Seventh Circuit's *Verizon Wireless* decision as dictum, he asserts that it "focus[ed] on the availability of attorneys fees under § 1988." Br. in Opp. 14. But fees under Section 1988 are available only if there is a claim under Section 1983. The Seventh Circuit's holding—that "42 U.S.C. § 1983, which drags section 1988 in its wake, should not be fastened, barnacle-like" to the Communications Act "by judicial *Diktat*," 352 F.3d at 1153—unambiguously forecloses both.



Finally, respondent errs in claiming (Br. in Opp. 14) that the disarray in the district courts (Pet. 19-20) weighs against review. That confusion demonstrates the pressing and pervasive nature of the conflict. See Stern, Gressman, *et al.*, *Supreme Court Practice* 239 (8th ed. 2002). Thousands of local governments now face grave uncertainty over whether good faith efforts to enforce local zoning requirements can lead to "serious, and potentially disastrous" fee awards and liability. Br. Nat'l League of Cities 11. Because that uncertainty undermines Congress's effort to "[p]reserv[e] * * * local zoning authority," 47 U.S.C. § 322(c)(7)—and forces municipalities to choose between potential liability and the permanent consequences of inappropriately sited towers—it underscores the need for prompt review. *Id.* at 13.

**II. The Issue Is Recurring And Important**

Respondent disputes neither the large number of cases addressing this issue nor the federal courts' observations that they "now routinely hear" antenna-siting disputes. Pet. 26. Nor does respondent take issue with the myriad factors that have generated that litigation, including ever-expanding wireless usage. *Id.* at 27-28 & n.8. Indeed, according to the Cellular Telephone Industry Association, more than *23,000* new cell sites were added in 2003 alone, <http://www.ctia.org/public_policy/statistics/index.cfm/AID/10030>, and local governments report "no let-up in the lawsuits that wireless carriers are filing." Br. Local Gov't Amici 18.

Respondent nonetheless asserts that his "thorough analysis" shows that the litigation has mysteriously evaporated, with "less than 10" Section 332(c)(7) cases "filed in 2003." Br. in Opp. 20. Not true. For *California alone*, the City's own (*ad hoc*) review of recent lawsuits filed by major PCS and cellular licensees—which necessarily excludes numerous suits by landowners or smaller businessmen like respondent—

identified no fewer than twelve Section 332(c)(7) lawsuits filed in 2003, *not one of which* is included in respondent's estimate. See App., *infra*, 6a-10a. Indeed, while respondent reports only 16 cases for 2002 and 2003 nationwide, the City lists in the Appendix, *infra*, no fewer than 110 confirmed cases filed during that period, and still more filed in the first half of 2004. Because the search for these cases is difficult (no centralized database exists), even these cases represent only the tip of the litigation iceberg. The assertion that the litigation has slowed to a "trickle" of 10 cases thus cannot be taken seriously.

Respondent's estimate appears to count only lawsuits with *reported decisions*. But only a small fraction of cases are resolved by judicial decision, and only a tiny fraction of those are *reported*. Nor do reported decisions accurately reflect trends in the quantity of litigation over time. When a statutory provision is new and its application is necessarily novel, a larger percentage of district court decisions addressing it will be designated for publication. Moreover, there will often be fewer reported decisions for more recent years because many recent cases remain unresolved. Respondent thus ignores the fact that, unlike cases filed in earlier years, almost half of the cases filed in 2003 cannot be reported because they have not been decided. Even respondent's explanation for the purported decline in lawsuits lacks credibility. Respondent posits that municipalities and wireless providers must have resolved their differences, because more than 92% of tower applications are now approved in less than 2 months. Resp. 20 (citing Admin. Rec. 1054). Respondent's 92% figure, however, is drawn from a document issued in 1996, shortly after Section 332(c)(7) was enacted. It thus neither supports nor explains respondent's claim that lawsuits have fallen off.

Finally, respondent disregards the dramatic chilling effect the Ninth Circuit's decision has on the exercise of the local zoning authority that Section 332(c)(7) was designed to preserve. As the petition explains (at 29-30), and as the amicus briefs of the National League of Cities, *et al.* (at 11-



14) and Local Governments (at 19-20) confirm, many local governments can ill-afford to risk potentially staggering fee awards or liability. Many thus may shrink from exercising their authority to reject even inappropriately sited towers. The need to avoid the enduring consequences of that distortion likewise supports further review.

## III. Review Is Appropriate In This Case

Respondent does not dispute that the decision below constitutes a final judgment reviewable under 28 U.S.C. § 1254(1). Nor does he deny that it conclusively resolves the *availability* of Section 1983 relief and Section 1988 fees. Nonetheless, he urges the Court to deny review because the Ninth Circuit remanded for a determination of the *amount* of damages and attorney's fees. Br. in Opp. 9-11. But that sort of remand, even if it renders the decision nominally "interlocutory," does not weigh against review here. Respondent concedes that this Court will grant review despite a remand "if resolution of the issue is 'fundamental to the further conduct of the case.'" Br. in Opp. 10 (quoting *Land* v. *Dollar*, 330 U.S. 731, 734 n.2 (1947)). Here, there will be no reason for proceedings on remand to calculate damages and fees if this Court, like the district court below and the Third and Seventh Circuits, determines that Section 1983 and 1988 relief is unavailable. It is difficult to imagine anything more "fundamental to the further conduct of [a] case" than whether there should be any further proceedings at all. The leading treatise agrees: "[T]he interlocutory status of the case may be no impediment to certiorari where," as here, the issue is "otherwise worthy of review, and [this Court's] intervention may serve to hasten or finally resolve the litigation." Stern, Gressman, *et al.*, *supra*, at 260.

Indeed, this Court has regularly granted review to decide the issue raised here—the availability of Section 1983 and 1988 relief—in precisely this procedural posture. *Sea Clammers* itself was such a case. There, as here, the district court held that relief under Sections 1983 and 1988 was un-

available, but the court of appeals reversed and "remanded to the district court for further proceedings." *Nat'l Sea Clammers Ass'n* v. *City of New York*, 616 F.2d 1222, 1238 (3d Cir. 1980). This Court granted the petition nonetheless, ultimately holding that Section 1983 and 1988 relief was foreclosed. 453 U.S. at 7-10. The Court has repeatedly reviewed other putatively "interlocutory" *Sea Clammers* decisions since. It did so despite a remedial remand in *Blessing* v. *Freestone*, 520 U.S. 329, 338-339 (1997), and despite a merits remand in *Wilder* v. *Virginia Hosp. Ass'n*, 496 U.S. 498, 504-505 (1990) (reviewing 868 F.2d 665). The Court did likewise in *Great American Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 369-370 (1978), addressing the availability of Section 1985 relief notwithstanding a remand, 584 F.2d at 1251-1253, 1262. Respondent offers no reason to depart from that settled practice here.

This Court, of course, is reluctant to grant petitions in interlocutory cases where the remand can add insight into or potentially alter the nature of the question before the Court. But where, as here, the issue before the Court is the statutory *availability* of fees or damages, remand proceedings on *amount*—matters respondent himself characterizes as "exclusively financial," Br. in Opp. 11—cannot have such an effect. Consequently, the Court has repeatedly granted review of attorney's fee decisions that, like the decision below, hold fees to be available and remand to the district court to determine the amount. See, *e.g.*, *Alyeska Pipeline Serv. Co.* v. *Wilderness Society*, 421 U.S. 240, 241, 246 (1975); *Marek v. Chesny*, 473 U.S. 1, 4-5 (1985); *North Carolina Dep't of Transp.* v. *Crest St. Cmty. Council, Inc.*, 479 U.S. 6, 11 (1986). The remands posed no barrier to review in those cases, and it likewise poses no barrier here.[1]

[1] Just last Term, this Court likewise granted review in numerous cases despite remand orders where the remand would not illuminate the question of statutory construction before the Court. *E.g.*, *General Dynamics Land Sys.* v. *Cline*, 124 S. Ct. 1236, 1240 (2004); *Pennsylvania State Police* v. *Suders*, 124 S. Ct. 2342, 2344 (2004); *Sabri* v. *United States*, 124 S. Ct. 1941 (2004). Respondent thus errs in relying on cases where the remand could illuminate or alter the question before the Court, such as *Virginia Military Inst.* v. *United States*, 508 U.S. 946 (1993) (Scalia, J., concurring). In *VMI*, the remand left the question presented—whether "it is constitutional for a State to have a men-only military school"—partially unresolved, stating that VMI *might not* be required to admit women if the State "establish[ed] parallel" institutions for them. 508 U.S at 946; 976 F.2d at 900. The remand thus had the potential not only to illuminate feasibility issues but also to change the case from one about wholesale exclusion of women, 976 F.2d at 898-899, to one about separate, parallel institutions.



## IV. Respondent's Defense Of The Ninth Circuit's Decision On The Merits Underscores The Need For Review

A. Respondent does not dispute that the Communications Act provides an expedited cause of action, 47 U.S.C. § 332(c)(7)(B)(v), through which aggrieved parties may obtain judicial redress from land-use decisions that violate the Act. Nor does he deny (Pet. 16, 18, 21) that Congress's decision to "provid[e] for private judicial remedies" itself "evidence[s] congressional intent to supplant the Section 1983 remedy." *Wright* v. *Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 427 (1987). Instead, respondent urges that the Communications Act's cause of action is not "remedial" under *Sea Clammers* because it does not "provide for damages, injunctive relief, attorneys fees or other forms of relief." Br. in Opp. 16 & n.16.

To the extent respondent argues that Section 332(c)(7)(B)(v) establishes a cause of action for judicial review, but does not permit courts to impose any remedies, his contention is absurd. Such a cause of action would be nonjusticiable; federal courts have no authority to issue advisory opinions divorced from relief that alters the legal relationship of the parties. That construction, moreover, conflicts with the decisions of every other court to have considered the issue, all of which have concluded that Section 332(c)(7)(B)(v) at least

authorizes injunctive relief. Pet. 22; Br. State Amici 17; Br. Local Gov't Amici 11-12.

Respondent's effort to label Section 332(c)(7)(B)(v) "procedural," Br. in Opp. 16-17, likewise misses the point. Federal courts deciding cases under the cause of action created by Section 332(c)(7)(B)(v) have authority to order issuance of the very thing the claimant sought in the first instance—a permit to build the disputed antenna structure—relief that is "quick and complete." *Nat'l Telecomm. Advisors, Inc.* v. *City of Chicopee*, 16 F. Supp. 2d 117, 123 (D. Mass. 1998). Indeed, the district court ordered precisely that relief here. Pet. App. 13a-15a. For that reason, respondent errs in relying (Br. in Opp. 17) on First Amendment adult-business-licensing decisions, such as *City of Littleton* v. *Z.J. Gifts*, 124 S. Ct. 2219 (2004). Those decisions recognize that expedited judicial review protects First Amendment interests precisely *because* it, like the judicial review provided by Section 332(c)(7)(B)(v), allows courts promptly to remedy improper permit denials.

B. Departing from his claim that the Communications Act provides *no* relief, respondent argues that relief under Section 332(c)(7)(B)(v) is less varied, Br. in Opp. 18, subject to a shorter limitations period, *id.* at 17, less rapid, *id.* at 17-18, or available through fewer venues (administrative as well as judicial), *id.* at 18-19, than respondent would like. But this Court repeatedly has recognized that Congress's imposition of *limits* on statutory remedies ordinarily precludes efforts to circumvent those limits through suit under Section 1983. Pet. 23-24 (quoting *Sea Clammers*, 453 U.S. at 20, and its progeny). Respondent's contrary approach illogically converts Congress's decision to *omit* particular remedies from the statutory scheme (*e.g.*, damages) into evidence that Congress *intended to provide those remedies* under Section 1983. Pet. 23-24.

The argument, moreover, reflects precisely the "more is better" approach to determining "comprehensiveness" under *Sea Clammers* that the Third and Seventh Circuits have



rejected. Br. State Amici 6-8. Those courts examine whether the remedial scheme represents a balance of "benefits and corresponding limitations" that suggests that *Congress* meant the scheme to be self-contained, or that might be upset by superimposing Section 1983's expansive remedies. The Communications Act's highly reticulated system, which repeatedly specifies legal duties for various entities *and* the corresponding remedial mechanisms, is precisely such a regime. See Pet. 21.

The Ninth Circuit's decision rides roughshod over the balance established by Section 332(c)(7)(B)(v). As the Third Circuit observed, permitting suit under Section 1983 would "free" plaintiffs from the "30-day limitations period" in Section 332(c)(7), would "free" courts from mandatory expedition, and would make "attorney's fees * * * available" even though Congress did not provide them in the Communications Act. 286 F.3d at 695; Pet. 24. Recognizing that, respondent urges that the Ninth Circuit's decision avoids such conflicts by "clearly" holding that the 30-day limitations period in Section 332(c)(7)(B)(v) applies to suits under Section 1983. Br. in Opp. 8, 11-12 & n.11, 21. But the Ninth Circuit's opinion never says that. The theory, moreover, is legally incoherent. The 30-day limitations period in Section 332(c)(7)(B)(v) does not by its terms apply to any cause of action other than the one that Section 332(c)(7)(B)(v) itself creates; respondent nowhere explains why that limit can be judicially transplanted from Section 332(c)(7) into a wholly separate statute like Section 1983. Indeed, such an effort would conflict with 42 U.S.C. § 1658. As the Third Circuit recognized, 286 F.3d at 695, Section 1658 would supply a four-year limitations period for Section 1983 suits like this one if such suits were permissible. Pet. 24 (citing *Jones* v. *R.R. Donnelly & Sons Co.*, 124 S. Ct. 1836, 1845 (2004)).

The theory is also at odds with *Sea Clammers* and its progeny. None of those cases transplants statutory limits from one remedial scheme—the 60-day notice rule in *Sea*

*Clammers*, 453 U.S. at 14, or the procedures and limitations in *Novotny*, 442 U.S. at 375-376, and *Smith* v. *Robinson*, 468 U.S. at 1010-1011—onto Section 1983. Rather, those cases recognize that, where Congress provides specific remedial procedures inconsistent with suit under Section 1983, Section 1983 remedies are unavailable.[2]

Ultimately, respondent never confronts the irony of construing a provision entitled "*Preservation* of local zoning authority" to impose the heavy sanctions of damages and attorney's fees on municipalities exercising that authority. Pet. 24. Moreover, while respondent admits that the Ninth Circuit's reading of the savings clause in 47 U.S.C. § 152 (note) conflicts with the Third Circuit's, Br. in Opp. 8-9; Pet. 19, respondent nowhere attempts to explain why the Ninth Circuit's reading is persuasive, see *Nextel*, 286 F.3d at 696. Nor does respondent try to reconcile the Ninth Circuit's construction of that savings clause with this Court's construction of a similar savings provision in *Sea Clammers*. Pet. 25-26. That silence speaks volumes.

* * * * *

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

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[2] Respondent's further attempt to reconcile the provisions by asserting that damages may be available under the Communications Act (Br. in Opp. 15), is likewise unpersuasive. The claim does not even reconcile the remedial regimes at a financial level, since Section 1983 exposes municipalities to large attorney's fee awards (which often exceed damages), whereas the Communications Act does not. Br. State Amici 17-18; Br. Nat'l League of Cities, *et al.*, 12-14. Furthermore, respondent did not seek damages under the Communications Act, and the Ninth Circuit noted "the lack of any damages in the" Act. Pet. App. 7a. Respondent thus seeks to avoid review by contradicting the decision he seeks to defend.

Respectfully submitted.

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# APPENDIX

## APPENDIX

Section 332(c)(7) Cases
2002-2004

**Cases filed in 2002**

1. *American Tower Corp.* v. *Town of Carlisle*, No. 02-CV-10285 (D. Mass. filed Feb. 20, 2002).
2. *American Towers, Inc.* v. *Woodward*, No. 02-CV-11919 (D. Mass. filed Sept. 30, 2002).
3. *AT&T Wireless PCS* v. *City of New Bedford*, No. 02-CV-12203 (D. Mass. filed Nov. 12, 2002).
4. *AT&T Wireless PCS* v. *Town of Ashburnham*, No. 02-CV-40236 (D. Mass. filed Dec. 2, 2002).
5. *AT&T Wireless PCS* v. *Town of Carlisle*, No. 02-CV-10271 (D. Mass. filed Feb. 19, 2002).
6. *AT&T Wireless PCS* v. *Town of Franklin*, No. 02-CV-12343 (D. Mass. filed Dec. 4, 2002).
7. *AT&T Wireless PCS* v. *Town of Goshen*, No. 02-CV-30214 (D. Mass. filed Dec. 20, 2002).
8. *AT&T Wireless PCS* v. *Town of Kingston*, No. 02-CV-12452 (D. Mass. filed Dec. 23, 2002).
9. *AT&T Wireless, PCS* v. *Town of Westminster*, No. 02-CV-40215 (D. Mass. filed Nov. 8, 2002).
10. *Cellco Partnership* v. *City of Lynn*, No. 02-CV-11583 (D. Mass. filed Aug. 6, 2002).
11. *Cellco Partnership* v. *Town of Carlisle*, No. 02-CV-10277 (D. Mass. filed Feb. 19, 2002).
12. *Cellco Partnership* v. *Town of Dudley*, No. 02-CV-12080 (D. Mass. filed Oct. 23, 2002).
13. *Cellco Partnership* v. *Town of Grafton,*, No. 02-CV-11600 (D. Mass. filed Aug. 9, 2002).

14. *Cox PCS Assets LLC* v. *City of Thousand Oaks*, No. 02-CV-02805 (C.D. Cal. filed Apr. 4, 2002) (Consolidated with *Pac Bell Wireless* v. *City of Thousand Oaks*, No. 02-CV-03780).
15. *Eliska Wireless* v. *Baldwin County Planning and Zoning Commission*, No. 02-CV-00721 (S.D. Ala. filed Sept. 26, 2002).
16. *Eliska Wireless* v. *City of Gulf Shores*, No. 1:02-CV-00639 (S.D. Ala. filed Aug. 21, 2002).
17. *Florida RSA No. 8 Inc.* v. *City of Gainesville*, No. 02-CV-126 (N.D. Fla. filed Sept. 30, 2002).
18. *GTE Mobilnet of California L.P.* v. *City of Watsonville*, No. 02-CV-05764 (N.D. Cal. filed Dec. 11, 2002).
19. *Independent Wireless One Corp.* v. *Town of Charlotte*, No. 02-CV-261 (D. Vt. filed Oct. 9, 2002) (242 F. Supp. 2d 409 (2003)).
20. *MetroPCS, Inc.* v. *City and County of San Francisco*, No. 02-CV-3442 (N.D. Cal. filed July 17, 2002) (259 F. Supp. 2d 1004 (2003)).
21. *New York SMSA L.P.* v. *Board of Appeals*, No. 02-CV-04885 (E.D.N.Y. filed Sept. 5, 2002).
22. *New York SMSA Limited* v. *Town of North Salem*, No. 7:02-CV-09662 (S.D.N.Y. filed Dec. 5, 2002).
23. *Nextel Communications* v. *Town of Provincetown*, No. 02-CV-12406 (D. Mass. filed Dec. 13, 2002).
24. *Nextel Communications of the Mid-Atlantic, Inc.* v. *City of Cambridge*, No. 02-CV-10429 (D. Mass. filed Mar. 12, 2002) (246 F. Supp. 2d 118 (2003)).
25. *Nextel Communications of the Mid-Atlantic, Inc.* v. *Town of Wayland*, No. 02-CV-10260 (D. Mass. filed Feb. 15, 2002) (231 F. Supp. 2d 396 (2002)).



26. *Nextel Communications of the Mid-Atlantic, Inc.* v. *Town of Provincetown*, No. 02-CV-11646 (D. Mass. filed Aug. 16, 2002) (2003 WL 21497159 (June 26, 2003)).
27. *Nextel Communications of the Mid-Atlantic, Inc.* v. *Ridley Park Borough*, No. 02-CV-07847 (E.D. Pa. filed Oct. 11, 2002).
28. *Nextel of New York* v. *Town of Lagrange*, No. 02-CV-04260 (S.D.N.Y. filed June 6, 2002).
29. *Nextel of New York, Inc.* v. *Board of Zoning Appeals of the Town of Hempstead*, No. 02-CV-04888 (E.D.N.Y. filed Sept. 6, 2002).
30. *Nextel Partners* v. *Sarpy County Board*, No. 02-CV-00282 (D. Neb. filed June 11, 2002).
31. *Nextel Partners* v. *Saunders County Board of Supervisors*, No. 02-CV-00516 (D. Neb. filed Nov. 5, 2002).
32. *Nextel Partners, Inc.* v. *Town of Amherst*, No. 02-CV-6483 (W.D.N.Y. filed Sept. 19, 2002) (251 F. Supp. 2d 1187 (2003)).
33. *Nextel* v. *Cobb County*, No. 02-CV-00129 (N.D. Ga. filed Jan. 17, 2002).
34. *Nextel WIP Lease* v. *Town of Charlotte*, No. 02-CV-00319 (D. Vt. filed Dec. 13, 2002).
35. *Omnipoint Holdings* v. *City of Lowell*, No. 02-CV-12234 (D. Mass. filed Nov. 15, 2002).
36. *Omnipoint Holdings* v. *Town of Ayer*, No. 02-CV-11415 (D. Mass. filed July 11, 2002).
37. *Pac Bell Wireless* v. *City of Irvine*, No. 02-CV-08947 (C.D. Cal. filed Nov. 21, 2002).

38. *Pac Bell Wireless* v. *City of Thousand Oaks*, No. 02-CV-3780 (C.D. Cal. filed May 9, 2002) (Consolidated with *Cox PCS Assets LLC* v. *City of Thousand Oaks*, No. 02-CV-02805).
39. *Pacific Bell Telephone Co.* v. *California Department of Transportation*, No. 3:02-CV-02500 (N.D. Cal. filed May 22, 2002).
40. *Pacific Bell* v. *City of Los Angeles*, No. 02-CV-7911 (S.D. Cal. filed Oct. 10, 2002).
41. *Pacific Bell Wireless LLC* v. *City of Los Angeles*, Nos. 02-CV-9152, 03-CV-00588 (S.D. Cal. filed Dec. 2, 2002).
42. *Sprint PCS Assets* v. *City of Malibu*, No. 02-CV-660 (C.D. Cal. filed July 17, 2002).
43. *Sprint Spectrum L.P.* v. *Town of Dartmouth*, No. 02-CV-10332 (D. Mass. filed Feb. 25, 2002).
44. *Sprint Spectrum L.P.* v. *Town of Groton*, No. 02-CV-10365 (D. Mass. filed Mar. 4, 2002).
45. *Sprint Spectrum L.P.* v. *Town of Norfolk*, No. 02-CV-10925 (D. Mass. filed May 22, 2002).
46. *Sprint Spectrum L.P.* v. *Town of Sharon*, No. 02-CV-11697 (D. Mass. filed Aug. 26, 2002).
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48. *Sprint Spectrum L.P.* v. *Village of Tarry*, No. 02-CV-06446 (S.D.N.Y. filed Aug. 14, 2002).
49. *Sprint Spectrum, L.P.* v. *City of Carmel*, No. 02-CV-01133 (S.D. Ind. filed July 23, 2002) (2003 WL 21254443 (Mar. 28, 2002)).
50. *Sprint Spectrum, L.P.* v. *Village of Irvington*, No. 02-CV-08204 (S.D.N.Y. filed Oct. 16, 2002).



51. *Sprint Telephony PCS* v. *County of San Diego*, No. 02-CV-2458 (S.D. Cal. filed Dec. 13, 2002).
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55. *Tower Asset Sub, Inc.* v. *McHenry County Conservation District*, No. 02-CV-5147 (N.D. Ill. filed July 19, 2002) (2002 WL 31375502 (Oct. 21, 2002)).
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61. *Wireless Solutions* v. *Saunders County Board of Supervisors*, No. 02-CV-00538 (D. Neb. filed Nov. 14, 2002).

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64. *AB Cellular LA LLC* v. *City of Santa Monica*, No. 03-CV-09129-DSF (C.D. Cal. filed Dec. 15, 2003).
65. *AB Cellular LA LLC* v. *City of Manhattan Beach*, No. 03-CV-02871 (C.D. Cal. filed Apr. 24, 2003).
66. *AT&T Wireless PCS LLP* v. *Town of Dartmouth*, No. 03-CV-10121 (D. Mass. filed Jan. 16, 2003).
67. *AT&T Wireless PCS* v. *Town of Charleston*, No. 03-421 (D. R.I. filed Sept. 17, 2003).
68. *AT&T Wireless PCS* v. *Town of Foster*, No. 03-287 (D. R.I. filed July 8, 2003).
69. *AT&T Wireless PCS* v. *City of Laconia*, No. 03-CV-00269 (D. N.H. filed June 19, 2003).
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73. *AT&T Wireless PCS, LLC* v. *Town of Acushnet*, No. 03-CV-12459 (D. Mass. filed Dec. 8, 2003).
74. *AT&T Wireless PCS, LLC* v. *Town of Billerica*, No. 03-CV-12105 (D. Mass. filed Oct. 30, 2003).
75. *AT&T Wireless PCS, LLC* v. *Town of Lakeville*, No. 03-CV-10921 (D. Mass. filed May 16, 2003).



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83. *Cellular South Licensees, Inc.* v. *City of Batesville*, No. 03-CV-276 (N.D. Miss. filed Aug. 13, 2003).
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86. *Industrial Communications & Electronics, Inc.* v. *Planning Board for the City of Fitchburg*, No. 03-CV-40130 (D. Mass. filed June 10, 2003).
87. *Los Angeles SMSA Ltd. Partnership* v. *City of Santa Monica*, No. 04-CV-03051 (C.D. Cal. filed Apr. 30, 2004).
88. *MCF Communications, Inc.* v. *Town of Stoughton*, No. 03-CV-12517 (D. Mass. filed Dec. 16, 2003).
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90. *Nextel Comms. of Mid-Atlantic, Inc.* v. *Town of Hanson*, No. 03-CV-12563 (D. Mass. filed Dec. 19, 2003) (311 F. Supp. 2d 142 (2004)).
91. *Nextel of California, Inc.* v. *City of Los Angeles*, No. 03-CV-00015 (C.D. Cal. filed Jan. 3, 2003).
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93. *Omnipoint Comms., Inc.* v. *Village of Tarrytown Planning Bd.*, No. 03-CV-6344 (S.D.N.Y. filed Aug. 22, 2003) (302 F. Supp. 2d 205 (2004)).
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97. *Omnipoint Holdings, Inc.* v. *City of Woburn*, No. 03-CV-10928 (D. Mass. filed May 16, 2003).
98. *Omnipoint Holdings, Inc.* v. *City of Woburn*, No. 03-CV-12030 (D. Mass. filed Oct. 21, 2003).
99. *Omnipoint Holdings, Inc.* v. *City of Woonsocket*, No. 03-350-S (D. R.I. filed Aug. 15, 2003).
100. *Omnipoint Holdings, Inc.* v. *Town of Danvers*, No. 03-CV-11888 (D. Mass. filed Sept. 26, 2003).
101. *Omnipoint Holdings, Inc.* v. *Town of Norwell*, No. 03-CV-10923 (D. Mass. filed May 16, 2003).
102. *Omnipoint Holdings, Inc.* v. *Town of Stoneham*, No. 03-CV-12133 (D. Mass. filed Oct. 31, 2003).
103. *Omnipoint* v. *Town of Fairfield*, No. 03-CV-01527 (D. Conn. filed Sept. 8, 2003).



104. *Pittsfield Cellular* v. *Town of Great Barrington*, No. 03-CV-30102 (D. Mass. filed Apr. 18, 2003).
105. *Powertel* v. *City of Statesboro*, No. 03-CV-68 (S.D. Ga. filed June 5, 2003).
106. *Powertel/Atlanta* v. *Coweta County*, No. 03-CV-11 (N.D. Ga. filed Jan. 16, 2003).
107. *Powertel/Atlanta* v. *Coweta County*, No. 03-CV-82 (N.D. Ga. filed June 19, 2003).
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112. *Sprint Spectrum L.P.* v. *City of Lowell*, No. 03-CV-11219 (D. Mass. filed July 29, 2003).
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117. *USCOC of Greater Iowa, Inc.* v. *City of Bellevue*, No. 03-CV-3197 (D. Neb. filed May 28, 2003) (279 F. Supp. 2d 1080 (2003)).

118. *USCOC of New Hampshire RSA No. 2 (US Cellular)* v. *City of Concord*, No. 03-61-JM (D. N.H. filed Feb. 14, 2003).

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120. *Voice Stream PCS I, LLC* v. *City of Hillsboro*, No. 03-CV-365 (D. Or. filed Mar. 21, 2003) (301 F. Supp. 2d 1251 (2004)).

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121. *Powertel/Atlanta, Inc.* v. *Habersham County*, No. 04-CV-56 (N.D. Ga. filed Mar. 17, 2004).

122. *Cellco Partnership* v. *Board of Supervisors of Roanoke County*, No. 7:04-CV-00029-SGW (W.D. Va. filed Jan. 14, 2004).

123. *Cincinnati Bell Wireless, LLC* v. *City of Cincinnati*, No. 104-CV-00192-SSB-TSB (S.D. Ohio filed Mar. 9, 2004).

124. *Cingular Wireless LLC* v. *Thurston County*, No. 04-CV-05009 (W.D. Wash. filed Jan. 12, 2004).

125. *GTE Mobilnet of California Ltd. Partnership* v. *City and County of San Francisco*, No. 04-CV-02534-SI (N.D. Cal. filed June 24, 2004).

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127. *Nextel Communications of the Mid-Atlantic Inc.* v. *Russell's Garden Center, Inc.*, No. 04-CV-10290 (D. Mass. filed Feb. 11, 2004).

128. *Nextel of New York, Inc.* v. *Town of Ramapo*, No. 04-CV-04402 (S.D.N.Y. filed 10, 2004).



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130. *Omnipoint Communications, Inc.* v. *City of Mount Vernon*, No. 4-CV-04129 (S.D.N.Y. filed June 2, 2004).

131. *Omnipoint Holdings* v. *Miami-Dade County*, No. 04-CV-21441 (S.D. Fla. filed June 18, 2004).

132. *Omnipoint Holdings, Inc.* v. *City of Somerville*, No. 04-CV-10713 (D. Mass. filed Apr. 9, 2004).

133. *Omnipoint Holdings, Inc.* v. *Town of Manchester by the Sea*, No. 04-CV-11460 (D. Mass. filed June 25, 2004).

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140. *Sprint Spectrum, L.P.* v. *Township of Brandon*, No. 04-CV-72159 (E.D. Mich. filed June 9, 2004).

141. *Sprint Spectrum, L.P.* v. *Town of Oyster Bay*, No. 04-CV-01552 (E.D.N.Y. filed Apr. 15, 2004).

142. *Sprint Spectrum, L.P.* v. *City of Lawrence*, No. 04-CV-10813 (D. Mass. filed May 6, 2004).

143. *Sprint Telephony PCS* v. *City of Carlsbad*, No. 04-CV-467 (S.D. Cal. filed Mar. 5, 2004).

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